

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NEPHTY CRUZ and MICHAEL BALLETO, as  
TRUSTEES OF THE DISTRICT 6 INTERNATIONAL  
UNION OF INDUSTRIAL, SERVICE, TRANSPORT  
AND HEALTH EMPLOYEES HEALTH AND  
PENSION PLANS, TRUSTEES OF THE DISTRICT 6  
INTERNATIONAL UNION OF INDUSTRIAL,  
SERVICE, TRANSPORT AND HEALTH  
EMPLOYEES PENSION PLAN,

Plaintiffs,

-against-

PINNACLE MANAGING CO., LLC; REALTY CORP.,  
LLC, a/k/a 3647 REALTY CO., LLC a/k/a 3657  
REALTY CO., LLC; and WIENER REALTY, LLC,

Defendants.

07 Civ. 6391 (GBD)

**DECLARATION OF  
JOSEPH MUZZILLO IN  
SUPPORT OF ORDER  
COMPELLING  
DEFENDANTS'  
COOPERATION IN  
CONDUCT OF AN AUDIT**

**JOSEPH MUZZILO** hereby declares that:

1. I am over the age of 18 and I am competent to testify in this proceeding.
2. I have personal knowledge of the matters set forth herein.
3. I am employed by Marshall & Moss LLP ("Marshall & Moss"), auditors for Plaintiffs in the above-captioned case.
4. As an employee of Marshall & Moss, and on behalf of Plaintiffs, I schedule payroll compliance audits of employers who are obligated to contribute to District 6 International Union of Industrial Service, Transport and Health Employees (the "Union").
5. By letter, dated June 19, 2006, Marshall & Moss gave notice to Defendant Wiener that it was retained by Plaintiffs for the purpose of conducting a payroll compliance audit and would contact Defendant to schedule the audit.

6. By letter, dated October 13, 2006, Marshall & Moss gave notice to Defendant Pinnacle that it was retained by Plaintiffs for the purpose of conducting a payroll compliance audit and would contact Defendant to schedule the audit.

7. On October 4, 2006 at approximately 3:15 p.m., I sent via facsimile transmission a copy of Marshall & Moss' letter of June 19, 2006 to Defendant Wiener.

8. On October 13, 2006 at approximately 1:00 p.m., I called Defendant Wiener to schedule an audit, but did not receive a response.

9. On October 19, 2006 at approximately 11:45 a.m. I called Defendant Pinnacle to schedule an audit. I was told that the principal was on jury duty, so I left a message for a call back.

10. On October 19, 2006 at approximately 12:00 p.m., I called Defendant Wiener to schedule an audit and left a message for a call back.

11. On October 30, 2006 at approximately 2:15 p.m., I called and left a message for Defendant Wiener regarding the scheduling of an audit.

12. On December 19, 2006 at approximately 11:00 a.m., I called Defendant Wiener and left a message regarding the scheduling of an audit.

13. By letter, dated December 27, 2006 and sent via certified mail return receipt requested to Defendants Pinnacle, Realty and Wiener, Marshall & Moss provided a list of documents to be produced in connection with the audit. The December 27, 2006 letter was signed for on January 4, 2007 by "Alex R. Velez."

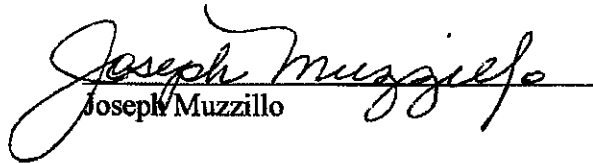
14. During the period from October 8, 2007 to October 12, 2007, I was on vacation and not in the office.

15. On October 15, 2007, on my return to the office from vacation, I received a written message from a co-worker which stated that Alan Wiener from Defendant Pinnacle had called to schedule an audit. On information and belief, Mr. Wiener did not leave a telephone number. That date, I e-mailed Kellie Terese Walker, counsel for Plaintiffs, to notify her that I had received Mr. Wiener's message.

16. As of October 17, 2007, I have not received a call back from any of the Defendants.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2007.

  
Joseph Muzzillo